



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: AUGUST 12, 2022

IN THE MATTER OF:

Appeal Board No. 622814

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective January 5, 2022, on the basis that the claimant voluntarily separated from employment without good cause; or, in the alternative, disqualifying the claimant from receiving benefits, effective

January 5, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to January 5, 2022 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed March 31, 2022 (), the Administrative Law Judge overruled the initial determinations.

The employer appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was employed as a full-time parking services officer by the employer, a university, from October 11, 2004, through January 4, 2022. Previously, the claimant had been approved for an exemption from the

employer's flu vaccine policy.

In October 2021, the employer instituted a policy that its employees must be vaccinated against COVID-19 unless they secured a medical or religious exemption. Both types of exemptions were available under the employer's policy. The employer decided to institute the policy although it was not mandated by the federal government.

The claimant applied for a religious exemption because he is an Israelite who does not eat certain foods and does not take vaccines per his religious beliefs although he takes pain medication. The claimant believed that the COVID-19 vaccines evade God's natural immune system. The claimant cited to Scripture in his request for an exemption, but he did not provide the employer with any literature or clergy letters supporting his request. The claimant's religious exemption request was denied three times because the employer did not regard his request as being based on a sincerely held religious belief.

In December 2021, the employer told the claimant that he would be separated from employment after January 4, 2022, if he did not get the COVID-19 vaccine. The claimant was aware that his employment would be terminated in the event he did not have the Covid-19 vaccination. The claimant refused to get vaccinated and his last day of employment was January 4, 2022.

OPINION: The credible evidence establishes the employer ended the claimant's employment on January 4, 2022, because the claimant chose not to get the COVID-19 vaccine in violation of the employer's October 2021 mandated vaccination policy. The claimant's decision not to be vaccinated is considered a quit rather than a discharge for unemployment insurance purposes because the claimant chose not to be vaccinated. And while the employer may have previously approved the claimant's request for a religious exemption from getting the flu vaccine, the employer did not grant the claimant's religious exemption from getting the COVID-19 vaccine.

An employer is permitted to require COVID-19 vaccinations for all of its employees. There is no New York State prohibition against New York employers mandating COVID-19 vaccinations for all employees. We note the claimant was aware that the employer had decided to institute the mandatory COVID-19 vaccination for all employees in order to protect its employees' and the student's health and safety. The claimant's personal beliefs do not outweigh the employer's interest in attempting to protect the health and safety of its

employees and students. The claimant has not substantiated that he had had a compelling reason constituting good cause within the meaning of the Law for refusing to have the COVID-19 vaccination in accordance with the employer's reasonable mandatory policy. The claimant failed to provide proof to support his personal belief that the COVID-19 vaccines evade God's natural immune system.

Therefore, we conclude that the claimant quit is considered personal and without good cause pursuant to Unemployment Insurance Law.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective January 5, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issue decided herein.

MICHAEL T. GREASON, MEMBER